



U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE

**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): March 1, 2021

**ORM Number:** MVP-2020-02333-EJW

**Associated JDs:** N/A

Review Area Location<sup>1</sup>:

**State/Territory:** MN **City:** Corcoran **County/Parish/Borough:** Hennepin County

Center Coordinates of Review Area: Latitude 45.103042 Longitude -93.546778

**II. FINDINGS**

**A. Summary:** Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in section II.B).
- ☐ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in section II.D).

**B. Rivers and Harbors Act of 1899 Section 10 (§ 10)<sup>2</sup>**

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A	N/A	N/A

**C. Clean Water Act Section 404**

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)<sup>3</sup>

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A	N/A	N/A	N/A

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A	N/A	N/A	N/A

<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12))<sup>4</sup>:

Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Drainageway 1	147 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Drainageways 1 and 2 are ditches that were excavated in upland. This determination is supported by information provided by the agent (MFR dated 1/25/21 in file) and verified using aerial imagery, and the delineation report. According to the agent, Drainageways 1 and 2 were excavated in uplands by the landowner. The wetland boundaries identified in the delineation report shows the area Drainageways 1 and 2 were excavated in as uplands and aerial imagery from Google Earth shows that they appear to have been excavated after 2008. MHAPO maps from 1945, 1957, and 1967 do not show these ditches. The Prospectus for a mitigation bank adjacent to the south of the site describes Drainageway 2 as an excavated portion of tile that continues northeast to South Fork Rush Creek. The tile does not constitute a surface flow connection to an (a)(1)-(a)(3) water though under the NWPR. Drainageways 1 and 2 meet the (b)(5) exemption under the NWPR rule and are not jurisdictional waters of the US.
Drainageway 2	176 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	
W1	0.81 acre	(b)(1) Non-adjacent wetland	Wetland W1 is adjacent to non-jurisdictional feature Drainageway 1 (see above) and uplands which was confirmed by the lidar map and aquatic resource boundaries submitted in the delineation report. Wetland W1 is not adjacent to any a(1)-a(3) water. W1 does not meet the definition of an adjacent wetland under the NWPR and is not a WOUS.

**III. SUPPORTING INFORMATION**

**A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: Outlet to Rush Creek Wetland Delineation Report by Stantec (December 10, 2020) and Rush Creek Reserve Wetland Bank Prospectus by Stantec (February 2, 2021)

This information (is and is not) sufficient for purposes of this AJD.

Rationale: Aerial imagery was utilized to determine when Drainageways 1 and 2 were excavated.

☐ Data sheets prepared by the Corps: *Title(s) and/or date(s)*.

☒ Photographs: (*aerial*) Google Earth 1991-2020; MHAPO 1945, 1957, and 1967

☐ Corps Site visit(s) conducted on: *Date(s)*.

☐ Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s)*.

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- \_\_\_ Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- \_\_\_ USDA NRCS Soil Survey: *Title(s) and/or date(s).*
- \_\_\_ USFWS NWI maps: *Title(s) and/or date(s).*
- \_\_\_ USGS topographic maps: *Title(s) and/or date(s).*

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

**B. Typical year assessment(s):** N/A

**C. Additional comments to support AJD:** N/A

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